1: Evans-Pritchard E-5 (1931, 1936) 1940
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undoubtedly due to the absence of shady forest which, in its turn, is probably due in the main to flooding and partly to firing. The prevalence of tsetse in the forest belt that stretches along the foot-hills of the Ethiopian escarpment has prevented the Nuer from expanding as far eastwards as they might have done, for it is clear that one of the reasons for their evacuation of Annak-land was the loss of stock. In relation to tsetse the Nuer, in their present territory, occupy a more favourable position than most Southern Sudan peoples.

A further consideration of great importance is the presence of many microscopic organisms that cause disease in men and cattle. This is not a subject about which we can say much. With regard to stock it may, however, be said that it suffers from many different diseases and that Nuer usually have some treatment for them, though it may be doubted whether it has much, if any, therapeutic value. The two most serious contagious diseases are bovine pleuro-pneumonia, which in some years causes heavy mortality among the herds, and rinderpest. Rinderpest entered the Sudan not more than fifty years ago and Nuer refer to the period before it came, along with Arab invaders, at the time the Bolloc age-set was being initiated, as 'the life of the cattle'. They have no way of combating the scourge once it has attacked a herd, but they are aware that an infected herd ought to be isolated. They are so used to it now that they generally take the precaution of splitting up their herd in the dry season, when it is prevalent, and placing beasts in widely separated camps, so that if it breaks out in any part of the country the cattle placed in another part may escape. An animal which recovers from the disease is known to be immune from further attacks and its value is thereby enhanced, though Nuer are aware that its calves will not enjoy the same immunity. Miss Soule tells me that Nuer claim to be able to tell if an animal has had rinderpest by scraping the tip of the horns and noting the colour beneath the surface. If it is white the animal is immune. Though threatened with starvation in the years of its visitation Nuer face the scourge with resignation and detachment.

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Rinderpest has caused and continues to cause terrible havoc in the herds. It cannot exactly be estimated what, and how

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extensive, have been the social changes which have resulted from this disturbance of the oecological equilibrium. Since bride-wealth consists of cattle there must have been for a time considerable dislocation of marriage arrangements, but stability has been reached to-day by lowering the number of cattle which have to be paid. A like assessment on a new footing does not seem to have been achieved in homicide negotiations, in which there is not the same goodwill between the parties as in marriage, and blood-wealth appears to have been claimed up to the present time at the old rate of payment, though Nuer recognise that bride-wealth and blood-wealth should rise and fall together. One cannot make any precise statement on the matter, but it is likely that feuds were less easily concluded than before and that consequently tribal relations were affected. It may also be supposed that decrease in stock has led to a general deterioration of the standard of living, for climatic conditions do not allow adequate compensation by expending further labour on horticulture. No doubt Nuer grew more millet than before, but they must have suffered a decrease in their total food-supply and, above all, in security. It will be seen in a later section that Nuer can no more exist on a purely horticultural economy than they can, at any rate since the introduction of rinderpest, exist on a purely pastoral economy. They must have a mixed economy and can compensate on one side or the other only to a very limited degree. Nuer sought to repair their losses rather by extensive raiding of their Dinka neighbours, passing on to them their own losses in stock. We know that Nuer raided Dinka before rinderpest entered the country, but it is likely that their foreign relations have been affected by the greater stimulus to aggression. Other probable effects could be noted, especially in kinship relations, but one can only guess their importance, so we confine our speculations to a few of those that may be supposed to have occurred in Nuer economy and political life.

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It was noted in Chapter I that to exist Nuer have to make use of a mixed economy, since their herds do not supply them with adequate nourishment. It will be seen in a later section that their millett harvest is often meagre and uncertain. Fish,

1: Evans-Pritchard E-5 (1931, 1936) ~~1940~~
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sacrifices to them by their prophets were believed to ensure booty and safety.

For the first time a single person symbolized, if only to a moderate degree and in a mainly spiritual and uninstitutionalized form, the unity of a tribe, for prophets are tribal figures. But they have a further significance, for their influence extended over tribal boundaries. Gwek had great influence in Gaajok, and it is said that because of it the Lou and the Gaajok for a time paid compensation for homicide between them. His influence reached as far as the Eastern Gaagwang and Gaajak. Dengkaka had a similar influence in the valley of the Zeraf, especially among the Thiang. Some of the Western Nuer prophets had a reputation among a number of neighbouring tribes which united for raids at the direction of their spirits. They were not a mechanism of tribal structure like leopard-skin chiefs, but were pivots of federation between adjacent tribes and personified the structural principle of opposition in its widest expression, the unity and homogeneity of Nuer against foreigners. Probably, the coalition of tribes and the organization of joint raids is very largely their achievement—though one cannot be sure of this in the absence of historical records—and has made them important and powerful figures in Nuerland. This interpretation explains how it is that prophets began half a century ago, or at any rate came to the fore then. Certain structural changes were taking place in response to changed conditions: the development of functions that were more purely political than any exercised by individuals before and of a greater degree of unity among neighbouring tribes than there had been hitherto. As Sky-gods passed at the death of prophets into their sons we are further justified in suggesting growth of hereditary political leadership which, with the strong tendency towards federation between adjacent tribes we attribute to the new Arab-European menace. Opposition between Nuer and their neighbours had always been sectional. They were now confronted by a more formidable and a common enemy. When the Government crushed the prophets this tendency was checked. As we understand the situation, the prophets were inevitably opposed to the Government because it was this opposition among the people which led to their emergence and was personified in them.

2:Evans-Pritchard E-5 (1931, 1936) 1951
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583 602 spirit both must be honoured by having a cow of the bride-cattle dedicated to it, though one spirit may receive a cow on the marriage of one daughter and the other on the marriage of her sister. Here again, this does not necessarily mean that the family of the bride get an extra cow, for generally one of the cows they would in any case have received is dedicated to a spirit and paid in its name. Sometimes, however, the bride's people do not put forward the claim till the end of the marriage negotiations, when the bridegroom's people think that a settlement has been reached and have already offered as many cattle as they are prepared to give. It is more difficult for them to refuse an extra cow to a spirit than to a man. If they are wise they will get to know all about the spirits of the bride's family—there may be more than two—and anticipate the claim by keeping a cow in reserve to meet it. Generally these essential claims are settled at the first bridewealth discussions held in the byre of the bride's father.

The maternal side of the family have a prior claim to consideration in that, as already explained, their portion is regarded to some extent as a deferred payment standing over from the marriage of the bride's mother. If there are not enough cattle to satisfy everyone at the time of the marriage the paternal relatives are usually prepared to allow the bridegroom to remain for some years in their debt, but the maternal relatives are less willing to forgo immediate satisfaction. The maternal kinsmen cannot make exorbitant demands because they have only a right to a conventional proportion of the bridewealth and the approximate number of cattle to be paid to them is therefore determined by the total number to be paid all round.

583 602 178 In marriages today the actual payments and distributions of cattle to definite persons, as distinct from the ideal allotment of fixed portions of the bridewealth to relationships, vary according to circumstances, the chief of which, apart from the relative desire of both parties to bring about the union, are the wealth in stock of the Nuer as a whole, the resources of the bridegroom's family and kin, the number of claimants and the shares allotted to them in other marriages, and the configuration of the bride's family.

There is good reason to suppose that till thirty to forty years ago cattle were so plentiful in Nuerland that bridewealth was paid at the ideal rate of 40 head. In recent years the herds have diminished through rinderpest, and raids on Dinka stock, the

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traditional means of recuperation, are prevented by the presence of the Anglo-Egyptian government. Diminution has been fairly uniform throughout the whole of Nuerland, and it would today in all parts be impossible for a man to raise as many as 40 head of cattle for marriage. The usual payment is from 10 to 30. It has been mentioned that there are a number of relationships with basic rights and the persons standing in these relationships, or representing those standing in them, must be guaranteed their portions to the number of cattle enumerated in the list presented above. Consequently, even if there are no wastgrown and spirit claims, the bridewealth cannot fall to less than 16 beasts. On the other hand, it cannot rise to more than the bridegroom and his people possess or are prepared to give, what they are prepared to give being mainly decided by what they possess. The bridewealth will therefore be somewhere between these two points. Now, the bride's family know fairly accurately what cattle are available and state their demands in the light of their knowledge, and the bridegroom's family know who are likely to put forward claims and, also, how many cattle they can muster, and they make their offer accordingly.

It is evident from the lengthy discussions that continue for hours at a time, and sometimes for days on end, that there is no absolutely fixed payment. What happens is that the basic claims are first settled in a preliminary manner, for there can be little argument about these, and further demands are then debated. The main concern of the bridegroom's party is to conduct the negotiations in such a way that they will not have promised up to the estimate they have allowed for before an adequate number of cattle have been allotted to all the persons who are beyond question entitled to them. They usually aim at settling all the outside claims before tackling the full family claims, in the settlement of which they may expect some forbearance. The family are as anxious as the bridegroom's people to settle the outside claims, for they are claims on the bride's father as much as on the bridegroom, and until they are met he cannot reap any benefit himself from the marriage. To facilitate their settlement the family are generally prepared to forgo some of their own rights and the expectation of full immediate payment.

The discussions are in terms of particular cattle. The bridegroom's people offer certain animals and these animals are known

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681 177 the collection of bridewealth, bloodwealth or other kinship obligations automatically come into operation. The fear of punishment is therefore a collective deterrent, and this, with the general realization that payment of compensation will irrevocably be enforced, has undoubtedly reduced the incidence of homicide. It has also to some extent had the effect of strengthening public opinion opposed to the use of violence, and people are likely to go to greater lengths to restrain their fellows. Conversely, the certainty of punishment and of the enforced payment of compensation has lessened the fear of retaliation and has resulted in a corresponding reduction in the force of those sanctions which make for the fulfilment of social obligations.

Although the concept of punishment inflicted by the State is alien to the Nuer, its introduction has not been difficult, and the deterrent effects are appreciated by chiefs and court members. In general terms, however, a European system of criminal justice is not always understood. Fratricide, for example, is considered a great wrong, and is one which is likely to shock Nuer deeply, but it does not demand any retribution or compensation. A man who kills his brother is injuring himself, and although this may demand a readjustment in matters of inheritance, he cannot pay compensation to himself. Moreover his action runs counter to the very basis of Nuer social sentiment and conflicts with their ideas of kinship solidarity. It is an act almost on a par with suicide, which is fraught with spiritual dangers to the surviving kinsmen. Fratricide is the negation of all social principles. The killer will have to undergo a complex process of ritual purification to appease the wrath of the ancestral spirits and to avoid the misfortunes which may follow, but he will not pay compensation to himself or his brothers. Similarly when a man kills his legally married wife he is causing an injury to himself, for he has paid cattle for her which will now never be returned. Again he will have to undergo ritual purification, will have to give a few cattle or other gifts to his relatives-in-law, but unless he has not completed the bridewealth payments, he will not have to pay compensation in the normal sense. In such circumstances the Nuer find the greatest difficulty in understanding why the Government should seek to punish the culprit, and a Nuer court will usually resist an attempt to do so. If the case is taken out of their hands by the formation of a Major Court under the Presidency of a District Commissioner or Judge, there is little comment and they will accept the sentence, but it would be difficult to persuade a Nuer court to pass sentence itself.

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671 ●178 Apart from the difficulties of understanding an alien system of justice, there are other factors which have had repercussions on the application of traditional Nuer law and in particular on the scales of compensation demanded for a wrong. It seems probable that with the absorption of Dinka elements and natural increase, human population

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is now much greater in relation to cattle than it was in the past. In addition, diseases have taken a heavy toll and the Nuer are unable to replenish their stock by raiding other tribes. As a result, bridewealth has decreased substantially, and Nuer have at one time or another felt that bloodwealth should be decreased in proportion. In most Nuer districts this has found its own level. In three of the then four Nuer districts the indemnity for homicide was reduced to only twenty head of cattle. This did not occur in Western Nuer District, where compensation remained at 40 head of cattle, but whether this was due to purely economic causes is not easy to discover. The Western Nuer have always had a reputation for being rich in cattle as compared to other Nuer tribes, though this is not entirely borne out by recent statistics. These changes have again been altered by recent legislation.

Recent Legislation Concerning Homicide

At the Nuer Council meeting in 1945 it was generally agreed that compensation for homicide should be raised once more in those districts where it had been reduced, and should be standardized at 50 head of cattle, of which 10 should go to the Government as a fine. In the absence of a sufficiently strong body of public opinion opposed to violence and the taking of life it was felt that this action might serve as a greater deterrent among the Nuer. More remotely related persons would be called upon to subscribe and, since payment of compensation is now rigidly enforced, there would be greater efforts by the people to settle their disputes without resort to force. It must be stressed here that this argument, though put forward by the Administration, was fully understood and appreciated by the Nuer chiefs present at the meeting, and the majority voted for the increase in the indemnity. Yet the argument is itself a doubtful one. In Western Nuer District, where compensation was never reduced, fighting and bloodshed were more common and widespread than in other Nuer districts.

The increase of compensation may have widespread repercussions in other spheres. Captain H. A. Romilly, District Commissioner of Eastern Nuer District, writes:

> One of the main decisions reached at the Pangak Meeting of 1945 has been to standardize blood-money at 50 head of cattle and to adjust other compensations accordingly. In Eastern Jikany this has had two main results:
>
> (a) First it has put up bride-price, and a marriageable girl has even less say than before in whom she marries. The heads of families and chiefs are responsible for debts being paid off, so the girl is sold off to the highest bidder, regardless of her feelings. This naturally results in more elopements, adultery, and divorces and consequently an increase in litigation.
>
> (b) The second result of the increase in blood-money is the reluctance of the chiefs to break war which is a system by which relations exchange cattle

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586 effect by the existence of the children as well as the advantages he receives from close and amicable relations with his wife's family.

General Observations

586 Nuer sometimes say that divorce was rare in the old days, and that
•178 when the marriage ceremonies had reached the stage of the *mut*, and even more so if a child had been born, neither side was at all likely to seek one. It is also said that if a woman died before or during the birth of her first child, her husband had no right to claim back his cattle: the responsibility rested with him. It is not now possible to assess the truth of a general statement of this sort, particularly as the informant can rarely quote actual examples, but it is clear that the number of cases of divorce which are brought before the courts is considerable and is increasing.

This is, perhaps, a reflection of the wider process of social disintegration which is taking place in Nuerland. The modification in those sanctions which make for social solidarity is likely to react on the institution of marriage as well as on the integration of the kinship group. Moreover, I suggest that the stability of marriage is deeply affected by the attitude of the parties concerned. If there was less chance of recovering bridewealth cattle or less chance of escape by the wife, they would be more likely to make the effort necessary for a successful marriage. Nuer imply that in the past it was not easy for a husband, having entered into marital relations with the bride's group and confirmed the marriage by the performance of the *mut*, to recover his cattle should he no longer want his wife. It was therefore in his interests to make a greater effort to retain his wife's affections and to fulfil the conventional obligations towards her and her relatives. She might run back to her home and, unless he had the support of a numerically superior community, he might find it difficult to obtain redress. Clearly the situation was affected by many different circumstances, and not least of these was the relative position in the social structure of the kinship groups involved and the distance in space between them. Divorce was not so easy, the husband had to make greater efforts to retain his wife, and probably entered marriage with greater care and consideration than he does today, although the slow process of courtship of girls and the eventual choice of a mate is presumably the same as it has always been, and is in itself a factor making for stability when marriage comes.

The comparative facility with which divorce can be obtained through the agency of the courts today means that the husband need not make so great an effort as in the past, because his cattle are nearly always recoverable. It might, of course, be argued that the wife's family must be more conciliatory towards the husband because divorce is

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recognized and is enforceable in the courts, and they have a greater chance of losing their cattle. I do not think that these are really major considerations because the Nuer do not think of marriage entirely in terms of cattle, but rather in terms of the union of which the cattle are merely a material symbol. Moreover, and this must be stated at once, the courts do not regard divorce with favour at all, and every effort is made by the court members to prevent it. There is intense feeling on this subject, and divorce is a symptom of social disintegration of which the Nuer are themselves aware. It is not so much the possibility of legal enforcement as the general recognition that divorce is possible at all, particularly after the *mart* and after children have been born of the union, which is the cause of the increase in the number of divorces. Added to this is the fact that union of peoples required for political security is less necessary than in the past, and therefore intermarriage does not serve the same purpose as it did then.

These features are apparent not only in the increased number of divorces but in the growing body of law concerning marriage and divorce which is administered in Nuer courts today. A complex system of law is only necessary when social relations cannot be controlled or maintained by any other means. Now that the sanctions which governed these relations are modified by external influences there is a greater need for law, and an evolutionary process can be seen, particularly because the courts are backed by legal sanctions entirely unknown in the past.

The following are a few representative cases which illustrate the processes of divorce and the circumstances accepted by the courts as sufficient grounds.

Dung Kang v. *Nyag Bik* (*Ash Nuer Appeal*)

Dung married Nyag's sister. There were no children, and Dung demanded a divorce on grounds of his wife's barrenness. This was refused by the court in the first instance but was allowed two years later by the appeal court.

Nuer courts will usually allow divorce on grounds of barrenness, but demand adequate proof. The passage of time (in this case about five years—including two years between the initial dispute and the appeal) is therefore relevant. Judgement against divorce by the court in the first instance and then reversal on appeal is therefore a common occurrence. By instituting proceedings the husband is bringing to the notice of the court and of the public his allegation that his wife is barren. The passage of time between this and the hearing of the appeal is then taken into consideration.

In some cases the birth of one child followed by non-productivity is grounds for divorce.

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421 the past nearly always expressed in terms of cattle and often on a conventional basis. Such articles were canoes and ivory bangles (though here the basic value of the ivory must be taken into account). These were of considerable value and, as will be seen, there were in the past scales of compensation demanded for their loss or misappropriation.

[439] (4) Imported articles, chiefly of iron, like fish-spears, iron spear-heads, hooks, iron hoes, &c. There were no iron smelters and few blacksmiths among the Nuer in those days. Iron wares were acquired from other tribes in exchange for cattle. These also had a conventional value and, in traditional legal processes, a conventional rate of compensation (*cut*).

We see therefore that there were various categories of chattels or movable property, some of which (those in the first category) had no definite or standard value because they were so easily obtainable; others which had exchange value, but no conventional rate of compensation for loss in excess of the exchange value (those in the second category); still others which had not only high exchange value in terms of cattle but also rates of compensation for loss, usually far in excess of that value (those in the third and fourth categories). The reason for the heavy damages demanded in such circumstances is discussed later. It may be noted here that it was partly due to the economic advantages obtained from the article (hoes or fish-spears for example) and hence the economic disadvantages caused by its loss, for it could not be easily replaced. Although actually held by an individual, the advantages applied to other members of his community, who would therefore assist him to obtain redress. Moreover, since it was initially purchased with cattle, kinsmen who had interests in those cattle would also have interests in the article.

[434] Finally another form of ownership, which must be mentioned in connexion with property relations, is possession of spirits or 'spirit medicines'. Certain kinds of spirits or medicines which have magical properties may be purchased with cattle. Such spirits are spoken of as being 'owned', but in contrast to more corporeal rights, they cannot be stolen because in the transference there must be some spiritual harmony between the two persons concerned, and the appropriate ritual must be performed. The nature of these spirits is discussed in a later chapter.

Changing Values

421 78 436 These observations apply to the past. Clearly concepts of property relations are undergoing swift and radical changes in Nuer society today. The introduction of a money economy in itself is bound to have repercussions on ideas of property and ownership. Most articles can be bought for relatively small sums of money, and money can be

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obtained by work or the sale of such products as hides and grain; and money can be used, apart from trade goods now in demand, to purchase cattle, although the market for cattle is still very limited.

Legal concepts based on values related to a subsistence economy only and conditioned by relative scarcity are bound to be modified when the economy begins to change, and the availability of certain articles is vastly increased. For example, although Nuer now practise agriculture on a larger scale than before and it is therefore of greater importance, an iron hoe valued at several head of cattle in the scale of traditional compensation, if it is ever stolen at all, now demands nothing more than material restitution. Another hoe can be purchased for a few piastres almost anywhere, and the threat of hardship from its loss is negligible. Hence nowadays the potential value of the hoe is ignored; only the actual trade value is assessed and, as will be seen, the wrong inflicted on the owner by taking it from him is not considered.

2. LAND TENURE, GRAZING RIGHTS, AND RIGHTS IN WATER

General Considerations

Rights in land, grazing, and fishing and drinking pools are held by those who are considered to be the descendants of the original occupiers of the area. This is particularly true of Nuer east of the Nile, for such rights are held by descent from the original colonizers. An understanding of land tenure, therefore, requires an analysis of the lineal structure of Nuer society and of the way in which areas were seized from the Dinka and occupied, mostly towards the end of the last century. The position and function of the nuclear clan or 'aristocrats' in each area who are called *diel*—as opposed to *rul*, i.e. later accretions who attach themselves to the original occupants—has already been explained. Most Nuer clans or tribes have strong traditions of an original division of land. Later accretions only acquire rights of possession by association with the nuclear lineage. This is in fact the basis of the whole system of Nuer society. Many *rul* lineages attempt to attach themselves to a nuclear lineage by real or fictitious relationship, often through intermarriage. The distinction in the latter case is clear, for, as we have seen, those who link themselves to the *diel* through previous marriages are called *gaat nyiet*, the 'sons of daughters', as opposed to *gaat tutni*,[1] 'sons of bulls'. *Diel* are always *gaat tutni* in the area they occupy; *gaat nyiet* are always *rul*, though *rul* are not all necessarily *gaat nyiet*. It seems that the word *rul* is applied with greater emotional intensity to those who have arrived and settled more recently, while those whose ancestors attached themselves earlier in Nuer

[1] See p. 18.

8:Howell E, G-5 (1942-1944)1954
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body capable of enforcing payment. To steal an article of this nature was a private delict and could only be settled by payment of compensation sufficient to appease the owner. Since ownership was in a sense collective, it was necessary to restore the balance between the groups concerned if hostilities were to be avoided. Compensation represented restitution or the equivalent value of the article and in addition recompense for the potential economic loss which might occur.[1] Clearly compensation was not paid rigidly according to conventional rules, but the scales were there to quote—once more as a basis for compromise.

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Compensation in excess of the actual trade value of the article stolen is never applied today. For one thing, most of these articles are no longer purchased with cattle but for small sums of money. Moreover they are so easily obtainable from local shops that the owner is scarcely likely to be involved in any real hardship. Ownership of such articles is now a more individual matter, and it is unlikely that two communities will embark on hostilities over such trivial matters as this unless other motives already exist. Even with possessions which still demand a high rate in cattle or substantial sums of money, like canoes, there is never any question of compensation in excess of that value, only restitution or the equivalent.

If the wrong is considered particularly grievous or if there has been a danger of a breach of public security, a Nuer court will usually inflict punishment on the culprit in the form of imprisonment or fine. Thus theft is rapidly becoming a criminal offence, rather than a private delict the seriousness of which was gauged by the potentialities of economic discomfort to the wronged and by the extent of compensation required to restore the balance between opposed groups. No economic discomfort is likely, and if there is any danger of hostilities this is met by penal sanctions. It is gratifying to be able to record that theft of this kind is still comparatively rare in Nuerland, though it is alarming and ominous that it is of more frequent occurrence in communities where detribalization is most apparent.

[1] It is interesting to note that the ordinary fighting-spear (*mut*), though made of iron, was not included in this category.

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671 In a strict sense Nuer have no law. There are conventional compensations for damage, adultery, loss of limb, and so forth, but there is no authority with power to adjudicate on such matters or to enforce a verdict.[1]

When this statement is applied to the past, no criticism can be made. So far as it is now possible to discover what happened in those days, we may safely say that arbitration only occurred when it was expedient for both parties to submit to it. We may also conclude that the conventional compensations referred to were in the nature of a formula for compromise. A start in the negotiations had to be made with reference to some scale, especially when the disputants were under the stress of heated emotions, but although such scales have a traditional consistency, there was no constancy or rigidity of application. 692 Finally we may say that there was no mechanism for enforcement should either party refuse to continue negotiations at any stage of the proceedings.

178 Professor Evans-Pritchard goes on to say:

> The recent introduction of Government courts, before which disputes are now sometimes settled, in no way weakens this impression, because one well knows how among other African peoples cases are brought before courts under Government supervision which would not previously have been settled in a court, or even settled at all, and how for a long time after the institution of such Government tribunals they operate side by side with the old methods of justice.[2]

This was written of the Lou Nuer as they were some twenty years ago, and the rapidity with which Government tribunals have developed since then is considerable. If it is argued that these tribunals are now applying the law beyond the limits of reality in the past, this statement is entirely true. If it is argued that the courts are administering a system of law which has no foundation in tradition at all, the statement is less true, though it is manifest that there are many innovations which are the result of an evolution of case law based on precedents, some of which are the natural development of Nuer ideas, some of which are due to the direct intervention of the Government. Rules of behaviour administered in the courts are none the less law, provided they are administered consistently on recognized principles and are enforced.

681 We have considered almost all those aspects of Nuer life which are subjects of discussion and dispute in the courts today: homicide and bodily injury; marital relationships, rights, and obligations; divorce and dissolution of marriages; the legitimacy of children; violation of rights in women; the infringement of grazing and fishing rights; theft and the misappropriation of property; witchcraft and other nefarious practices. In the past the sanctions for conformity with rules of conduct and for the composition of wrongs, if a breach of those rules

[1] Evans-Pritchard, *The Nuer*, p. 162. [2] Ibid.

8:Howell E, G-5 (1942-1944)1954
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were often at feud with each other. Scarcity of food, an annual occurrence among the Nuer, made mutual assistance in the subsistence economy essential, and this in turn created mutual obligations and reciprocal duties which extended beyond the sphere of economics. Isolation during the rains, varying degrees of necessity to migrate during the dry season in search of pasture, and the variable quality of the grazing available affected the quality and cohesion of the community and its relations with other communities.

These factors are much modified today. The need for common defence or aggression is considerably less because of the intervention of the Government. The scarcity of food and the fear of famine is reduced because in the last resort the Government has, at any rate for the past fifteen years, arranged to import grain for sale to the Nuer, should it be necessary. Isolation at any time of the year is less complete since communications have improved. The integration of the territorial groupings of Nuer society is for these reasons much affected. Communities are essentially territorial in basis and integrated by common sentiments which naturally arise. Through them stretch the concept of patrilineal descent and ties arising from marital relationships. Any modification of the sanctions which uphold the balance of this social system leads to a conflict of loyalties and a tendency to revert to kinship ties alone, even though kinship ties are themselves loosened by the growing process of social disintegration. Fission is caused by the modification of those sanctions which make fusion necessary. In the past, as Professor Evans-Pritchard has pointed out, the latter process was a complement of the former. When a group broke away from its homeland or split owing to a feud within itself, unless the members were sufficiently numerous to retain their identity and resist external aggression, they had to find a place in society somewhere or suffer political or economic insecurity.

Nowadays, when security against the opposition of others and the need for economic insurance are no longer so acutely necessary, the process is confined to splitting into smaller units of segmentation. This is a fundamental tendency apparent in Nuer society today, and the political aspect of the process is manifest in the endless demands for further and yet further representation in the courts by headmen (*gaat tutni*) who are the leaders of smaller and smaller segments. Representation in the courts so that personal claims in legal disputes may receive personal backing is the real motive behind this tendency. Yet the factor of 'balanced opposition' is still evident in the procedure of Nuer tribunals. It is more particularly manifest when a joint meeting is held between tribes or secondary segments. The attitude of the chiefs in such circumstances is always 'if you settle these cases, we will settle those'. Thus, to take an example, a court meeting of the Thiang Bang (primary segment) may appear chaotic so long as

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disputes are confined to tertiary or lesser segments within it. A man of *cieng* Bedit (a secondary segment) will receive the backing of court members who represent *cieng* Bedit when arguing a case against a man of *cieng* Juagh (another secondary segment), and the decision reached is in the form of a compromise between them. Even though judgement is given, it will depend on the spirit of compromise between those segments whether the chiefs will see to it that the judgement is promptly executed. There is also present a neutral body represented by the chiefs of other segments who, with the segments concerned, make up the sum total of the people over whom the court has jurisdiction. These will tend to act as arbitrators, while those who represent the segments to which the disputants belong are really acting as advocates rather than judges, but it will be the latter upon whom the responsibility of execution will fall. This is how a Nuer court functions, and if there is a joint meeting between the whole of Thiang and another tribe, all representatives of each side, previously at loggerheads with each other over internal affairs, will join together in forwarding the interests of their own people.

The spirit of compromise usually prevails. In disputes which are hotly contested it has been usual to bring in chiefs from other tribal areas to act as neutral arbitrators, and from this appeal courts have been formed, although in the recent past it was the District Commissioner who acted in this capacity. The balanced opposition of groups is therefore still an essential feature of the Nuer court system, and in this sense the courts are a stabilizing factor in the maintenance or re-emphasis of group identity.

The Introduction of Penal Sanctions

Some of the more general effects of the introduction of ordered administration and the establishment of Nuer tribunals have already been mentioned. We must now consider the effects of these influences on the nature of the law itself. We have seen that in the past, with the exception of the most rudimentary form of public and collective action which was sometimes taken against witches and other anti-social persons, there was nothing to suggest the existence of public law among the Nuer. The law, if we are justified in speaking of the law in reference to the past, comprised all those rules of conduct which regulated the behaviour of individuals and of groups, were maintained by indeterminate and relative sanctions, and were directed to the continuance of equilibrium in society. Since society among the Nuer is segmentary, this aspect is particularly obvious in what we have called the 'balanced opposition' of the component segments. Nowadays people who refuse to conform to the accepted pattern of behaviour, whether by the avoidance of duties or by the violation of the